

REMARKS

Applicants are in receipt of the Final Office Action mailed June 9, 2008 and the Advisory Action of August 25, 2008. Following careful study, the Applicants have amended the claims to indicate that the claimed subject matter involves an active Clostridial neurotoxin joined to a neuropharmacological agent; wherein the active neurotoxin comprises a TeTx heavy chain and a TeTx light chain, possesses mouse lethality of 3.3×10^5 LD₅₀/mg or greater, has binding specificity for and is internalizable by a target nerve cell, and has enzymatic activity for a target substrate selected from the group consisting of SNAP-25, VAMP, and Cellubrevin. In so doing, the applicants make no admission that the scope of the claims prior to such amendments was unpatentable. Indeed, Applicants believe the previous claims are patentable, and reserve the right to pursue claims having the full scope of the previously pending claims in a continuation application. However, Applicants simply wish to find common ground with the Examiner in this application in order to permit the present patent claims to issue.

Thus, claims 32, 34, 39 and 40 have been cancelled without prejudice. Claim 31 was amended to contain limitations essentially as described above, as was claim 38. Claim 45 was amended to include the term "an inhibitor of neurotransmitter release", which was supported by, e.g., previously pending claim 36.

Claim Rejections

I. Rejection of claims 31-32 and 34-45 pursuant to 35 U.S.C.
112(1).

The Final Office Action alleged that claims 31-32 and 34-45 violate the written description requirement because among the Clostridial toxins of the present specification, only TeTx dichains are allegedly described as having an activity of 3.3×10^5 LD₅₀/mg or greater (see Example 6). While Applicants respectfully disagree with the Examiner that the previous claims lacked sufficient written description of the invention, the claims have nevertheless now been amended to recite that the active neurotoxin comprises a TeTx heavy chain and a TeTx light chain.

Thus, the person of ordinary skill in the art would clearly understand from reading the present specification that the inventors of the presently claimed invention were in possession of the invention of the presently pending claims; indeed, the patent application contains working examples of this embodiment of the invention; e.g., Example 6.

For these reason the Applicants respectfully cottoned that the rejection is moot and request that the Examiner reconsider and withdraw the present rejection.

Serial No. 09/676,053
RCE Submission

CONCLUSION

The claims are now clearly allowable and Applicants respectfully ask that the Examiner issue a Notice to this effect.

A check is attached in the amount of the fee for a three month extension of time to take action following the filing of a Notice of Appeal. However, kindly use Deposit Account 50-4004 for the payment of any other any charge now due, or to credit any overpayment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Carlos A. Fisher', with a large, stylized initial 'C'.

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